UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/649
20 July 1994

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 649

Case No. 700: SHEHADEH

Against: The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 30 April and 15 July 1992, Mohammad Husein Shehadeh, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees, hereinafter referred to as UNRWA, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 15 October 1992, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal, inter alia, to order:

"...

1. Reappointment to an equivalent post within the same qualifications and classification in the Jerusalem Field Office.

2. $30,000 compensation for the suffering, humiliation and pain sustained in the lengthy termination disagreement."

Whereas the Respondent filed his answer on 29 March 1993;

Whereas the Applicant filed written observations on 30 April 1993;

Whereas the facts in the case are as follows:

The Applicant, an area staff member, entered the service of UNRWA on 12 June 1989, as Guard "A" at the grade 2, step 1 level, at the West Bank Field Office. His appointment was subject to probationary service of one year.

On 28 July 1990, the Director of UNRWA Operations, West Bank, wrote to the Applicant, stating that during his probationary period of service, his "work performance and official conduct were subject to many complaints" and as he had "failed to improve [his] work performance up to the required standard" his services with the Agency would be terminated with effect from 7 August 1990.

On 3 August 1990, the Applicant requested the Commissioner-General to review the administrative decision to terminate his services. On 10 September 1990, he lodged an appeal with the Joint Appeals Board (JAB). After consultations between the Agency's Headquarters and the West Bank Field Office, on 3 December 1990, the Acting Director of UNRWA Operations, West Bank, informed the Applicant that the Administration had reconsidered his case and had decided to reinstate him with effect from 8 August 1990. The Field Administration also granted the Applicant special leave with full pay to cover the period between 8 August 1990 and the date of his return to duty. The probationary period was extended for six months from the date of reinstatement, and the Applicant was provisionally assigned to the post of Sanitation Foreman in the Shu'fat Camp, at his previous grade and salary, until a suitable post became available. The Applicant began to work as Sanitation Foreman in the Shu'fat Camp on 7 December 1990.

In a letter dated 5 January 1991, the Applicant reported to the Field Director that on 12 December 1990, six masked men assaulted him in the Camp and prevented him from performing his work, and that masked men assaulted him a second time, on 2 January 1991. The Administration thereafter transferred the Applicant on 4 January 1991, to the post of Kitchen Worker, at the Kalandia Vocational Training Centre. In his letter, the Applicant claimed that he could not "carry out the duties of a Kitchen Worker" as he

was too old for this type of work and requested a different assignment. In a reply dated 6 April 1991, the Officer-in-Charge of the Department of Administration at the West Bank Field Office informed the Applicant that he would be transferred to the post of Sanitation Labourer at the Kalandia Camp, with effect from 15 April 1991. The Applicant was given until 10 April 1991, to accept the post.

On 22 April 1991, the Applicant requested a transfer back to the Field Office. He noted that he had made an effort to negotiate an alternative to the post of Sanitation Labourer which he considered to be an "affront" to him. He claimed he was too old to perform these tasks and could not bear the physical effects they had on him. He noted that he had previously requested to return to his former post as Guard at the Field Office, as he had understood that a post was available, but he had not been selected for the post. In a letter dated 29 April 1991, the Field Director, noting that the Applicant had been transferred to three posts, informed the Applicant that he would not change his assignment. He also noted that the Applicant had not communicated his acceptance of the post and advised him to make his intentions known or he would risk termination for abandonment of post.

On 9 May 1991, the Applicant wrote to the Commissioner-General, rejecting the post of Sanitation Labourer, as it degraded his status among his family and the community. He asked that he be transferred back to his former post of Guard at the Field Office. On the same date, the Applicant wrote to the Secretary of the Joint Appeals Board (JAB) asking that his case "be looked into with equity and justice". On 24 May 1991, the Applicant responded to the Field Director's letter of 29 April 1991. After reviewing the difficulties that he had encountered in his three posts, he asked that he be returned to the Field Office in a post suited to his qualifications.

According to the record, on 29 May 1991, the Field Administration Officer, the Field Personnel Officer and the Assistant Field Administration Officer met with the Applicant at the

West Bank Field Office, to discuss his current situation. They explained to him that two alternatives to his present assignment had been considered, but proved impracticable because of threats that had been made to his life in connection with both appointments. The Field Administration Officer told the Applicant that his options were (a) to accept his appointment as Sanitation Labourer, (b) to resign, or (c) to be separated from service with the Agency. The Field Administration Officer also explained to the Applicant the consequences attached to each option. The Applicant reiterated on that occasion, that he would not accept the post of Sanitation Labourer in the Kalandia Camp, which he also confirmed in writing. On 29 May 1991, the Director of UNRWA Operations, West Bank, informed the Applicant that "with effect from 29 May 1991, [he was] terminated in the interests of the Agency, following [his] non acceptance of the post of Sanitation Labourer at Kalandia Camp."

On 10 June 1991, the Applicant requested the Field Director to reconsider the decision to terminate his services and to re-employ him in certain posts which he claimed were vacant. In a reply dated 22 July 1991, the Field Director informed the Applicant that there was no suitable vacancy for him at the Field Office and that the termination of his services was caused by his refusal to accept the employment offered to him.

In the meantime, on 1 July 1991, the Applicant lodged an appeal with the JAB. The JAB adopted its report on 4 February 1992. It recommended as follows:

> "(a) Reinstatement of the Appellant in any post in a vicinity that is far from circumstances that led to his termination and which is commensurate with his qualifications and age.
>
> (b) Considering the period between the time of termination and the effective date of reinstatement as special leave without pay.
>
> (c) Placing the Appellant under strict supervision during a further probationary period of six months."

On 16 March 1992, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

> "A careful review of your history of employment with the Agency has convinced me that the Administration has made all reasonable efforts to keep you in service. I noted that after your reinstatement on 3 December 1990, the Administration accepted to transfer you several times, on account of difficulties that you experienced in each assignment. In view of the fact that you have refused appointment to the only available post, I can only confirm the decision to terminate your employment, which will therefore stand."

On 15 October 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision to terminate the Applicant's employment was unfounded. He did not refuse appointment but was only stating a strong preference for another post if there was one available.

2. The Applicant had reasons to believe that there were other posts available, as he had been so informed by an UNRWA official.

Whereas the Respondent's principal contentions are:

1. The purpose of probationary service is to allow the employer to ascertain whether or not the staff member is suitable for service. The Applicant, by his conduct, demonstrated that he should not be kept in service with UNRWA.

2. The Applicant refused the only post available for him, thereby demonstrating that he was not willing to cooperate with bona fide efforts of the Administration to find a solution.

3. The termination of the Applicant's services during probation was made in accordance with the Agency's Regulations and Rules and section 2 of the Applicant's letter of appointment.

4. The Applicant has failed to demonstrate that the impugned decision was based on inadequate or erroneous information or motivated by prejudice or some other extraneous factor.

The Tribunal, having deliberated from 27 June to 20 July 1994, now pronounces the following judgement:

I. To adjudicate on the question of the Applicant's separation from his post of Sanitation Labourer, with effect from 29 May 1991, the Tribunal must deal with the history that led to the Applicant's separation.

II. The Applicant was initially separated from his post of Guard with effect from 7 August 1990. This termination, according to the Agency, was due to the Applicant's less than wholly satisfactory performance during his twelve-month probationary period.

The Tribunal notes that following the Applicant's request that his case be referred to the Joint Appeals Board, he was offered re-instatement. He was, provisionally, appointed to the post of Sanitation Foreman, Shu'fat Camp, until a suitable post would become available. However, from this point forward, the Applicant's history is an unhappy one. He had scarcely taken up his work when six masked men assaulted him, and within less than a month, he was again assaulted. Because of these incidents, he was appointed a Kitchen Worker, but again, this proved an impossible task. By the Applicant's account, he could not carry out the work because of his age.

As a result, the Applicant was appointed Sanitation Labourer at the Kalandia Camp, with effect from 15 April 1991.

III. The saga did not end there. The Applicant considered the appointment an affront. He was not physically capable of doing the work and the work was degrading, demeaning and humiliating. He protested at being given this post. He wanted back his post as a Guard at the Field Office, as he felt that such a vacancy existed.

The dispute continued between the parties and resulted in his appointment being terminated on 29 May 1991.

IV. In his pleas, the Applicant seeks, in addition to compensation, appointment to an equivalent post with the same qualifications and classification in the West Bank Field Office. He appears to say, in his argument, that he did not refuse appointment to the sanitation post. His unhappiness was, in part, due to his perception that other posts were available.

It is difficult to see how, in the main thrust of its actions, the Agency behaved unreasonably. It would appear that the Agency was entitled to terminate the Applicant's services as Guard. His work had not been fully satisfactory, and there is nothing to suggest that there was any other reason for dismissing him.

V. Can the Agency's subsequent behaviour be said to have been unfair or wrong in any way? The assaults on the Applicant cannot be laid at the door of the Agency. Nor was the Agency remiss in relation to the problems that occurred during his work in the kitchen.

The Agency finally sought to place the Applicant as Sanitation Labourer, and it was when this post did not work out that the end was finally reached. In the absence of any evidence, particularly medical evidence, the Tribunal is not inclined to accept the Applicant's contention that his health did not permit him to carry out the work. His own doctor appears to have prescribed no more than three days's rest. The Applicant's problems seem to have been due less to his health than to injured pride and hurt feelings.

The Tribunal notes, however, that the Applicant had no control over the situation that obtained when he was Sanitation Foreman; he bears no responsibility for the assaults. In fact, he was a victim. It must also be borne in mind that, as he says he could not do the kitchen work, it seems the reality was that somebody of a younger age was, in fact, required for such work. Furthermore, if he had continued to work in the kitchen, it would

have exposed to risk the students who were working with him, because of the threats to him.

VI. In the Tribunal's view, the Agency was justified in dismissing the Applicant from his post of Guard. It then took the initiative of giving him other posts. It was not the Applicant's fault that the first two such posts did not work out.

When the Applicant's appointment to the post of Sanitation Labourer, with grade protection, ended badly, it does seem to the Tribunal that the Agency had done all that it could reasonably have been expected to do. The Applicant was somewhat ambivalent in his attitude to this post. He says, at one stage, that though he did not agree with the procedures adopted, there was no outright rejection of the appointment, and he was ultimately dismissed. At first glance, the process of termination may seem to have happened rather quickly. However, the Tribunal is of the view that, because the appointment was actually made as far back as April 1991, the Applicant had ample time in which to consider his position and accept that the Agency was serious in its intent not to appoint him to any other post. Its decision seems to have been reasonable in the circumstances, there being no compelling evidence of the availability of any other suitable post.

VII. While the Joint Appeals Board recommended that, with certain provisos, the Applicant should be re-instated, the Tribunal's view is that this would be unreasonable. The Agency has shown itself, at all stages, to be willing to place the Applicant in different posts and it could not reasonably be expected to have done more. The Applicant, in his attitude to the final post, was unreasonable in his reaction.

However, the Agency appointed him to two posts which through no particular fault of the Applicant, turned out not to have been suitable. It is the Tribunal's view that, in taking it upon itself to appoint the Applicant to these posts, the Agency should have ensured, in so far as it could, that the posts would be suitable for

the Applicant. In not doing so, and in so appointing the Applicant, the Agency caused him to believe, not just once but twice, that his employment problems were at an end. When this turned out not to be so, the inevitable result was acute upset, distress and disappointment for the Applicant.

VIII. Having taken all the relevant factors into account the Tribunal orders the Respondent to pay to the Applicant six months of his net base salary at the rate in effect on the date of his separation.

(Signatures)

Samar SEN
President

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 20 July 1994

R. Maria VICIEN MILBURN
Executive Secretary